



## **ENVIRONMENTAL PROTECTION AGENCY**

**[EPA-HQ-OLEM-2021-0348; FRL-8419-02-OLEM]**

### **Modernizing Public Notice for RCRA Hazardous Waste Permitting and Other Actions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) is providing notice and inviting public comment on allowing modern electronic alternatives for public notification in implementing Subtitle C of the Resource Conservation and Recovery Act (RCRA). Specifically, this notice communicates the EPA's interpretation that the RCRA and EPA regulatory provisions that require newspaper notice for certain actions (e.g., permit issuance) can be satisfied by notice in qualifying online newspapers, as well as print newspapers. The EPA is also requesting comment regarding whether online mechanisms that might not typically be viewed as newspapers, such as bulletins or newsletters published online by state environmental agencies, could also satisfy these requirements. This notice further explains the EPA's view that the EPA in appropriate cases can authorize state regulations that provide for equivalent notice mechanisms other than newspaper publication for actions other than permit issuance (permit modifications for example). Finally, this notice requests comment on whether EPA should amend its regulations to allow for more flexibility in providing notice of permit actions and other RCRA actions.

**DATES:** Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA-HQ-OLEM-2021-0348, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov> (our preferred method). Follow the online instructions for submitting comments.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, Office of Land and

Emergency Management Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

- Hand Delivery or Courier (by scheduled appointment only): EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. – 4:30 p.m., Monday – Friday (except Federal Holidays).

*Instructions:* All submissions received must include the Docket ID No. for this notice. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the process, see the “Public Participation” heading of the SUPPLEMENTARY INFORMATION section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are open to the public by appointment only to reduce the risk of transmitting COVID-19. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov/>, as there may be a delay in processing mail. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this notice.

**FOR FURTHER INFORMATION CONTACT:**

*Information on today's notice:* Tab Sommer, Program Implementation and Information Division, Office of Resource Conservation and Recovery (Mail Code: 5303T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202-566-0363; email address: [sommer.tab@epa.gov](mailto:sommer.tab@epa.gov).

*Information on public participation in general:* Toshia King, Program Implementation and Information

Division, Office of Resource Conservation and Recovery (Mail Code: 5303T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202-566-0468; email address: king.toshia@epa.gov.

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Contents**

The information presented in this preamble is organized as follows:

- I. Table of Contents
- II. Public Participation
  - A. Docket
  - B. Written Comments
  - C. Submitting CBI
- III. General Information
  - A. Does this Action Apply to Me?
  - B. Purpose
  - C. Authority
- IV. Statutory and Regulatory Requirements Related to Public Notice for RCRA Permits
- V. Public Notice Availability, Efficiency, and Effectiveness
  - A. Community-Specific Public Participation Planning
  - B. Lack of Available Print Newspapers in Some Communities
  - C. Relative Benefits of Online Notice Vehicles
- VI. Clarify Statutory and Regulatory Requirements for Newspaper Notice of RCRA Permitting and Other Actions
  - A. Online Newspapers that are Local and of General Circulation Satisfy RCRA and Regulatory Requirements
  - B. Request for Comment on Whether Online EPA or State Newsletters/Bulletins Would Satisfy RCRA and Regulatory Requirements
- VII. Newspaper Notice Requirements for Permitting Actions That Are Not Subject to RCRA Section 7004(b)(2)
- VIII. Environmental Justice and Civil Rights Considerations
- IX. Do Guidance Documents Contain Binding Requirements?

### **II. Public Participation**

#### *A. Docket*

The EPA has established a docket for this action under Docket ID No. EPA-HQ-OLEM-2021-0348. All documents in the docket are listed in the <https://www.regulations.gov> index. Publicly available docket materials are available either electronically at <https://www.regulations.gov> or in hard copy at the EPA Docket Center. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

#### *B. Written Comments*

Submit your comments, identified by Docket ID No. EPA-HQ-OLEM-2021-0348, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Due to public health concerns related to COVID-19, the EPA Docket Center and Reading Room are open to the public by appointment only. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at <https://www.epa.gov/dockets>.

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID-19.

### *C. Submitting CBI*

Do not submit information that you consider to be CBI electronically through <https://www.regulations.gov> or email. Send or deliver information identified as CBI to only the following address: ORCR Document Control Officer, Mail Code 5305T, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; Attn: Docket ID No. EPA-HQ-OLEM-2021-0348. Clearly mark the part or all of the information that you claim to be CBI.

For CBI information in a disk or CD-ROM that you mail to the EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. If you submit a CD-ROM or disk that does not contain CBI, mark the outside of the disk or CD-ROM clearly that it does not contain CBI. Information marked as CBI will not be disclosed except in accordance with procedures set forth in Title 40 of the Code of Federal Regulations Part 2.

### **III. General Information**

#### *A. Does this Action Apply to Me?*

Entities potentially affected by this notice include states and territories authorized by the EPA to implement the RCRA Subtitle C hazardous waste program, and the EPA Regions that directly implement the RCRA hazardous waste program. Other potentially affected entities include owners and operators of RCRA hazardous waste facilities that are seeking permit or other actions under RCRA, as well as members of the general public who have an interest in RCRA public participation (particularly for the RCRA hazardous waste permitting process).

#### *B. Purpose*

The EPA is providing notice and inviting public comment on allowing modern electronic alternatives for public notice of the intent to issue hazardous waste permits and other actions. The discussion in this notice focuses on the statutory and regulatory requirements for newspaper notice of permitting actions. However, the interpretations EPA provides and invites comment on in this notice apply to all the RCRA Subtitle C hazardous waste regulatory provisions that require newspaper notice.

First, this notice communicates the EPA's intention to consider qualifying online newspapers as satisfying the public notice requirements under RCRA section 7004(b)(2), 42 USC 6974(b)(2). That section of the RCRA statute states "before the issuing of a permit...for the treatment, storage, or disposal of hazardous wastes...the Administrator shall cause to be published in major local newspaper

of general circulation....” Specifically, the EPA interprets the phrase “major local newspaper of general circulation” in that section as including qualifying online newspapers. Thus, notice in such newspapers can satisfy the statutory requirement to provide public notice of an “agency’s intention to issue. . . a permit” for a RCRA hazardous waste treatment, storage or disposal facility, so long as the newspapers are “major,” “local,” and “of general circulation.” Notice in such newspapers can also satisfy the corresponding EPA regulatory requirements. The main RCRA newspaper public notice regulatory requirement is at §124.10(c)(2)(ii) of Title 40 of the Code of Federal Regulations (CFR); additional RCRA permitting and other RCRA hazardous waste regulations also require various forms of newspaper notification. The EPA plans to operate under this interpretation; however, the EPA welcomes comment on it and may either affirm the interpretation or revise it following review of any comments. Authorized states with similar newspaper notice regulations would be able to implement an online newspaper interpretation similar to EPA’s without seeking authorization if no state regulatory changes are made; states would have this ability with respect this to notice for permit issuance (i.e., initial permit and permit renewals) and other actions (e.g., permit modifications).

Second, this notice requests comment on whether online mechanisms that might not typically be viewed as “newspapers,” such as bulletins or newsletters published online by state (or EPA) environmental agency, could also satisfy RCRA section 7004(b)(2)’s public notice requirement and regulatory newspaper notice requirements.

Third, this notice explains the EPA’s view that, for actions other than permit issuance<sup>1</sup> (permit modifications for example), which are not governed by section 7004(b)(2), the EPA in appropriate cases can authorize state regulations that provide for notice mechanisms other than newspaper publication, even where EPA regulations require the agency, the permittee, or state, to provide notice of such actions through newspaper publication, as long as the notice is equivalent to and no less stringent than the federal program as discussed in Section VII.

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<sup>1</sup> All uses of the term “permit issuance” in this notice includes the issuance of RCRA permit renewals in addition to the issuance of initial permits.

Fourth, the EPA is requesting comment on whether it should modify its RCRA hazardous waste regulations that require newspaper notice, in order to allow the Agency more flexibility for notices that are not governed by section 7004(b)(2) (permit modifications for example) and to codify the flexibility discussed in Section VI for permit issuance notice under section 7004(b)(2) (for use of online newspapers and possibly agency newsletters and bulletins).

For the reasons explained in this notice, the EPA believes both RCRA section 7004(b)(2) and EPA regulations (for permit issuance and other permit actions) can and should be interpreted broadly to effectuate the underlying purpose of public notice of RCRA Subtitle C permit actions, which is to inform the public in the most effective, efficient way of permit actions in their communities. More broadly, the purpose of all the public notice requirements in the Subtitle C regulations is to inform the public of actions and activities related to the Subtitle C program within their states and communities. The EPA intends to allow for the full range of flexibility afforded by RCRA and EPA regulations to satisfy public notice requirements; permitting agencies and other environmental agencies implementing RCRA have discretion to choose which public notice mechanisms would be most effective based on the characteristics and needs of a specific community or circumstance. This effort does not narrow or limit any existing flexibilities for notices under Subtitle C.

In exercising this flexibility, recipients of federal financial assistance, including from EPA, must comply with federal civil rights laws, including Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973. Title VI prohibits discrimination on the basis race color or national origin, including limited English proficiency, and recipients have an affirmative obligation to ensure individuals with limited English proficiency have a meaningful opportunity to participate in permit and other decision making and public involvement processes, including through the translation of vital documents and the provision of qualified interpreter services. Section 504 of the Rehabilitation Act prohibits discrimination on the basis of disability, and recipients must provide persons with disabilities needed reasonable accommodations and appropriate auxiliary aids and services where necessary so they

may effectively participate in permit actions and other public participation processes.<sup>2</sup>

While the focus of this Federal Register notice is on modern online (electronic) newspaper notice options, EPA notes for context that authorized state programs and the EPA are currently making use of electronic alternatives to in-person hearings,<sup>3</sup> in-person meetings,<sup>4</sup> and postal mail<sup>5</sup> to meet additional public notice requirements for some RCRA hazardous waste permitting actions.

### C. Authority

This document is issued under the authority of sections 2002, 3005, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C. 6912, 6925, 6974).

## IV. Statutory and Regulatory Requirements Related to Public Notice for RCRA Permits

RCRA permits are required for the treatment, storage, or disposal of hazardous waste (*see* 42 U.S.C. 6925). These permits include facility-specific requirements, based on the applicable RCRA regulations, for the management of hazardous wastes and are issued by authorized states or EPA regional offices. When “permitting agencies” are referenced in this notice, we are referring to state programs that are authorized to implement the RCRA permitting regulations in lieu of EPA, or EPA regional offices. As discussed further below, permitting agencies are required to publish notices as part of the permitting

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<sup>2</sup> See Title VI, 42 U.S.C. 2000(d) *et seq.*; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; *Lau v. Nichols*, 414 U.S. 563, 568-69 (1974) (finding that the government properly required language services to be provided under a recipient’s Title VI obligations not to discriminate based on national origin); 40 CFR 7.30 and 7.35. See also U.S. EPA, Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. 69 FR 35602 (June 25, 2004) (available at [https://www.epa.gov/sites/production/files/2020-02/documents/title\\_vi\\_lep\\_guidance\\_for\\_epa\\_recipients\\_2004.06.25.pdf](https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_lep_guidance_for_epa_recipients_2004.06.25.pdf)); U.S. EPA, Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs, 71 FR 14207 (March 21, 2006) (available at [https://www.epa.gov/sites/production/files/2020-02/documents/title\\_vi\\_public\\_involvement\\_guidance\\_for\\_epa\\_recipients\\_2006.03.21.pdf](https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_public_involvement_guidance_for_epa_recipients_2006.03.21.pdf)); U.S. EPA, Procedural Safeguards Checklist for Recipients, at [https://www.epa.gov/sites/production/files/2020-02/documents/procedural\\_safeguards\\_checklist\\_for\\_recipients\\_2020.01.pdf](https://www.epa.gov/sites/production/files/2020-02/documents/procedural_safeguards_checklist_for_recipients_2020.01.pdf) (rev. Jan. 2020) (which provides a more detailed explanation of nondiscrimination obligations and best practices); U.S. EPA, Disability Nondiscrimination Plan Sample, at [https://www.epa.gov/sites/production/files/2020-02/documents/disability\\_nondiscrimination\\_plan\\_sample\\_for\\_recipients\\_2020.01.pdf](https://www.epa.gov/sites/production/files/2020-02/documents/disability_nondiscrimination_plan_sample_for_recipients_2020.01.pdf). (2017).

<sup>3</sup> EPA Office of General Counsel. *Memorandum: Virtual Public Hearings and Meetings*. 16 April, 2020. Accessed via: [https://www.epa.gov/sites/production/files/2020-04/documents/ogc\\_virtual\\_hearing\\_memo\\_4-16-2020.pdf](https://www.epa.gov/sites/production/files/2020-04/documents/ogc_virtual_hearing_memo_4-16-2020.pdf). EPA. *RCRA Public Participation Manual – Tools for hearings*. Accessed via: [https://www.epa.gov/sites/default/files/2020-04/documents/public\\_hearings-rcra\\_tools-508\\_compliant\\_12-20-191.pdf](https://www.epa.gov/sites/default/files/2020-04/documents/public_hearings-rcra_tools-508_compliant_12-20-191.pdf)

<sup>4</sup> EPA. *RCRA Public Participation Manual – Tools for meetings*. Accessed via: [https://www.epa.gov/sites/default/files/2020-04/documents/public\\_meetings-rcra\\_tools-508\\_compliant\\_12-20-191.pdf](https://www.epa.gov/sites/default/files/2020-04/documents/public_meetings-rcra_tools-508_compliant_12-20-191.pdf)

<sup>5</sup> EPA. *RCRA Public Participation Manual – Tools for mailings*. Accessed via: [https://www.epa.gov/sites/production/files/2021-04/documents/mailling\\_lists-rcra\\_tools-508\\_compliant\\_12-20-19\\_updated.pdf](https://www.epa.gov/sites/production/files/2021-04/documents/mailling_lists-rcra_tools-508_compliant_12-20-19_updated.pdf).

process. This notice also sometimes refers to “state environmental agencies” when speaking about state RCRA environmental programs acting in capacities broader than permitting.

RCRA section 7004(b)(2), 42 U.S.C. 6974(b)(2), states: “Before the issuing of a permit to any person with respect to any facility for the treatment, storage, or disposal of hazardous wastes under section 3005, the Administrator shall - (A) cause to be published in major local newspapers of general circulation and broadcast over local radio stations notice of the agency’s intention to issue such permit...” This section further provides that “no state program which provides for the issuance of permits referred to in this paragraph may be authorized by the Administrator under section 6926 of this title unless such program provides for the notice. . . required by the paragraph.” Thus, this requirement governs permitting by both EPA and authorized states. The EPA’s main regulation implementing this provision requires “publication of a notice in a daily or weekly major local newspaper of general circulation.” While this regulation implements RCRA section 7004(b)(2) by requiring newspaper notice of the intent to issue a permit, it also covers a range of other permitting actions which are not governed by that section.

Section 7004(b)(2) applies when EPA or authorized states are “issuing” permits. EPA interprets this section to apply to permit renewals as well as initial issuance of permits, since each RCRA permit has an expiration date, which by statute cannot extend beyond ten years from the date of issuance (RCRA section 3005(c)(3)). The renewal of a RCRA permit is, in effect, the issuance of a RCRA permit, because it replaces the previous permit and establishes a new permit term. However, the EPA does not view other permit actions – for example, a permit modification – as the issuance of permits, because they do not replace the existing permit and do not establish another permit term. Other sections of RCRA distinguish between the issuance and modification of permits (*see, e.g.*, RCRA section 3005(c)(3)). Permit modification notification by the agency and the permittee is just one example of permitting actions not governed by section 7004(b)(2) for which the regulation requires newspaper public notice. See Section VII for details.

As explained further in Section VII, when EPA is the implementing agency, it is subject to the

requirements specified in the regulatory text,<sup>6</sup> but authorized states have flexibility to adopt and seek authorization for other public notice approaches that are equivalent to and at least as stringent as the EPA regulatory requirements, when undertaking actions other than permit issuance (permit modifications for example).

## **V. Public Notice Availability, Efficiency, and Effectiveness**

### *A. Community-Specific Public Participation Planning*

The EPA would like to emphasize that the RCRA program is committed to the importance of adapting public notice methods to the local community and doing appropriate research and outreach to determine what combination of methods will work best for a given community, including disadvantaged populations within the community, persons with limited English proficiency, and persons with disabilities. There are two main steps to achieve this according to the 2016 RCRA Public Participation Manual: The first is to assess the community and the second is to develop a public participation plan.<sup>7</sup> Conducting these recommended steps will increase the degree of meaningful community engagement when it comes to obtaining public input for upcoming EPA RCRA decision-making at the facilities that the communities host. Such decisions include permit issuance, but also include other actions outlined in the manual.

*Assessing the Community.* According to the approach described in the 2016 RCRA Public Participation Manual, before designing a public participation plan, the permitting agency would perform a community assessment and begin by determining the level of community interest in the action. Each community is different and has its own way of spreading information to interested people. Key institutions and groups also vary from place to place, as do socioeconomic status, limited English proficiency culture and traditions, political and religious activity, disabilities, and values. Understanding these community characteristics is essential to facilitating successful public participation. Community assessments should help agencies, facility owners/operators, and public interest groups identify public

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<sup>6</sup> For example, when EPA is the permitting authority, it must give newspaper notice for agency-initiated permit modifications per the regulatory requirements (§§ 270.41, 124.5, and 124.10(c)(2)(ii)).

<sup>7</sup> EPA Office of Land and Emergency Management. *Resource Conservation and Recovery Act Public Participation Manual*. 2016. 530-R-16-013, Chapter 5. Accessed via: [https://www.epa.gov/sites/default/files/2019-09/documents/final\\_rcra\\_ppm\\_updated.pdf](https://www.epa.gov/sites/default/files/2019-09/documents/final_rcra_ppm_updated.pdf)

participation activities that are useful and meaningful for particular communities. Assessments can include mapping the area around the facility and identifying off-site impacts.

*Public Participation Plan Development.* After identifying the major community groups, concerns and relevant community characteristics during the community assessment, the agency drafts a public participation plan to address the following components of a public participation plan framework:

- Identifying and establishing effective methods for communicating with community members (e.g., mailing lists, newsletters, interviews, local broadcast television station news programs, websites, public notice signs at the facility, public conference calls, online social media platforms presence, and other information sources).
- Communicating with the media and elected officials.
- Planning and conducting public participation events.
- Coordinating public participation with other stakeholder groups and community events.
- Preparing and distributing additional resources such as fact sheets, public notices, news releases, meeting handouts, presentations and online or social media updates.

With respect to RCRA permitting, there are both public notice activities required by the statute and regulations, and public notice activities that are optional and can be tailored to reach a specific community. The list below includes examples of required and optional methods (dependent on the specific RCRA actions being taken):<sup>8</sup>

*Required for the applicant in the regulations:*

- Newspaper;
- Radio broadcast;
- Public roadway signage at the facility location or entrances to public roadway;
- Information repository; and

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<sup>8</sup> EPA Office of Land and Emergency Management. *Resource Conservation and Recovery Act Public Participation Manual*. 2016. Exhibit 5-1 and 5-2. Accessed via: [https://www.epa.gov/sites/default/files/2019-09/documents/final\\_rcra\\_ppm\\_updated.pdf](https://www.epa.gov/sites/default/files/2019-09/documents/final_rcra_ppm_updated.pdf)

- Pre-application meetings and meeting documentation.

*Required for the agency in the regulations:*

- Newspaper;
- Mailing list;
- Fact sheets/statements of basis;
- Meetings/hearings;
- Public comment (including response to comment); and
- Notice of decision.

*Other optional methods of public engagement:*<sup>9</sup>

- Community interviews;
- Community advisory groups;
- Telephone calls including public conference calls;
- Local public television (broadcast and cable) seeking local news content;
- Informal meetings with stakeholders;
- Focus groups;
- Facility tours and observation decks;
- On-Scene Information Offices;
- Briefings with key stakeholders;
- Project newsletters and reports;
- Presentations to concerned community groups (and others);
- Exhibits and information tables; and
- Workshops.

In addition to the public participation requirements identified in RCRA and EPA regulations, recipients of federal financial assistance, including from EPA, must comply with federal civil rights

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<sup>9</sup> EPA Office of Land and Emergency Management. *Resource Conservation and Recovery Act Public Participation Manual*. 2016. Exhibit 5- 3. Accessed via: [https://www.epa.gov/sites/default/files/2019-09/documents/final\\_rcra\\_ppm\\_updated.pdf](https://www.epa.gov/sites/default/files/2019-09/documents/final_rcra_ppm_updated.pdf)

laws. These civil rights laws require recipients to ensure individuals with limited English proficiency have a meaningful opportunity to participate in permit and other decision making and public involvement processes, including through the translation of vital documents and the provision of qualified interpreter services. The federal civil rights laws also require that recipients provide persons with disabilities needed reasonable accommodations and appropriate auxiliary aids and services where necessary so they may effectively participate in permit actions and other public participation processes. This includes an obligation, when in-person hearings are held, to choose facilities in which to hold permit hearings and other public participation events, that are accessible to persons with physical disabilities.

Communities have different needs. Some communities have a lack of newspapers, and most of the community members consume news through the internet (as described in Section V.B); while other communities may have limited internet access. According to a Pew Research Center survey of U.S. adults conducted from Jan. 25 to Feb. 8, 2021,<sup>10,11</sup> “7% of U.S. adults say they do not use the internet” and it also states that “rural residents go online less frequently than their urban counterparts” and that “eight-in-ten adults who live in rural communities say they use the internet on at least a daily basis, compared with roughly nine-in-ten of those in urban areas (88%).” While people tend to use the internet on multiple devices, this is less common with rural residents according to the Pew Research Survey, and they may need to rely on the internet connection at home. “Roughly seven-in-ten rural Americans (72%) say they have a broadband internet connection at home.” In communities with widely used local newspapers and limited internet access, it is expected that the community assessment process listed above would result in a development of a public participation plan that focuses on the use of the local print newspaper (in addition to other methods, as needed).

In addition, several tribal members raised to the EPA that some households on tribal lands do not

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<sup>10</sup> Perrin, A. and Atske, S. *7% of Americans don't use the internet. Who are they?* Pew Research Center, 2021. Accessed via: <https://www.pewresearch.org/fact-tank/2021/04/02/7-of-americans-dont-use-the-internet-who-are-they/>

<sup>11</sup> Vogels, E. A. *Some digital divides persist between rural, urban and suburban America.* Pew Research Center, 2021. Accessed via: <https://www.pewresearch.org/fact-tank/2021/08/19/some-digital-divides-persist-between-rural-urban-and-suburban-america>

have access to the internet and rely on other methods like local television and radio.<sup>12</sup> According to the Federal Communications Commission (FCC), 628,000 tribal households - roughly 36% of Tribal households nationwide - lack access to standard broadband (no providers). The same FCC report stated that 8% of non-tribal households lacked access to standard broadband providers.<sup>13</sup> A study by the American Indian Policy Institute in 2019 found nearly one in five reservation residents has no internet at home.<sup>14</sup>

These statistics underscore the importance of assessing the community and planning public participation based on community characteristics and needs.

### *B. Lack of Available Print Newspapers in Some Communities*

Many localities no longer have newspapers that might have traditionally been considered “local;” there has been a trend in newspapers ceasing publication; and there has been a trend in circulation reductions. These three trends are described below.

- *Communities with no local newspaper.* - According to a study in 2018 by the University of North Carolina Hussman School of Media and Journalism (UNC Hussman), nationally 171 counties with 3.2 million residents had no local newspaper.<sup>15</sup> The counties without a newspaper have now increased to more than 200 according to their updated report (2020 UNC Hussman report<sup>16</sup>).
- *Recent trend of newspaper reductions.* - The 2020 UNC Hussman report also concluded that, in the past 15 years, the U.S. has lost one-fourth (2,100) of its newspapers “leaving at least 1,800 communities that had a local news outlet in 2004 without any at the beginning of 2020.” Most of these losses were sustained in economically struggling communities; however, some were also in

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<sup>12</sup> The EPA provided an opportunity for tribes to consult with EPA on this Federal Register Notice and held an informational webinar for tribes in October 2021. More on the consultation process can be found at: <https://www.epa.gov/tribal/epa-policy-consultation-and-coordination-indian-tribes>.

<sup>13</sup> Federal Communications Commission. *Report on Broadband Deployment in Indian Country, Pursuant to the Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018*. Submission to the Senate Committee on Commerce, Science, and Transportation House of Representatives Committee on Energy and Commerce, 2019. Figure 2. Accessed via: <https://www.fcc.gov/document/report-broadband-deployment-indian-country>.

<sup>14</sup> Schapiro, A. *Coronavirus crisis threatens internet opportunity for Native Americans*. Reuters. 2020. Accessed via: <https://www.reuters.com/article/us-health-coronavirus-usa-rights-trfn/coronavirus-crisis-threatens-internet-opportunity-for-native-americans-idUSKCN24T06B>.

<sup>15</sup> Abernathy, P. *The Expanding News Desert*. University of North Carolina Press. 2018. Accessed via: [https://www.cislm.org/wp-content/uploads/2018/10/The-Expanding-News-Desert-10\\_14-Web.pdf](https://www.cislm.org/wp-content/uploads/2018/10/The-Expanding-News-Desert-10_14-Web.pdf)

<sup>16</sup> Abernathy, P. *News Deserts and Ghost Newspapers: Will Local News Survive?* University of North Carolina Press. 2020. Accessed via: [https://www.usnewsdeserts.com/wp-content/uploads/2020/06/2020\\_News\\_Deserts\\_and\\_Ghost\\_Newspapers.pdf](https://www.usnewsdeserts.com/wp-content/uploads/2020/06/2020_News_Deserts_and_Ghost_Newspapers.pdf)

larger cities with more affluent readership. UNC Hussman also found that the economic fallout from the COVID-19 pandemic has dramatically increased the decline – with at least 30 newspapers that closed or merged in April and May of 2020, and dozens of newspapers that switched to online-only delivery of news.<sup>17</sup>

- *Circulation reduction trends.* - The same 2020 UNC Hussman report stated that total newspaper circulation decreased by 55 million between 2004 and the end of 2019. An estimated “half of newspaper readers have vanished over the past 15 years.” Between 2004 and 2019, total weekday circulation – including both dailies and weeklies – declined 45 percent, from more than 122 million to 68 million. Daily papers lost 22 million print readers. Only 39 dailies had a circulation of more than 100,000 in 2019, compared with 104 in 2004. Most of the drop in daily circulation resulted from decisions by owners of dailies to pare back distribution of the print paper, especially in outlying areas. The dramatic circulation drop occurred despite new rules adopted by the industry after 2004 that allowed newspapers to count print and online readership that had previously been excluded (this is likely to undercount online readership since “circulation” does not include free online readership).<sup>18,19</sup>

State permitting agencies have also raised these trends in various meetings over the years with EPA, reporting that print newspapers are not available in all communities. A few recent examples have been shared with the EPA. An example illustrating the ineffectiveness of newspaper notification in some scenarios is the Holcim facility in Artesia, Mississippi. EPA Region 4 issued a renewal permit on September 21, 2017, to operate a RCRA hazardous waste fuel blending facility. Because there was no local paper with readership in the community near the facility, EPA issued public notice in a more regional newspaper out of Starkville, Mississippi, over 20 miles from Holcim’s facility. The region also posted the draft permit on their website and took comments for the duration of the comment period and

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<sup>17</sup> Abernathy, P. *News Deserts and Ghost Newspapers: Will Local News Survive?* University of North Carolina Press. 2020. Accessed via: [https://www.usnewsdeserts.com/wp-content/uploads/2020/06/2020\\_News\\_Deserts\\_and\\_Ghost\\_Newspapers.pdf](https://www.usnewsdeserts.com/wp-content/uploads/2020/06/2020_News_Deserts_and_Ghost_Newspapers.pdf)

<sup>18</sup> Abernathy, P. *News Deserts and Ghost Newspapers: Will Local News Survive?* University of North Carolina Press. 2020. Accessed via: [https://www.usnewsdeserts.com/wp-content/uploads/2020/06/2020\\_News\\_Deserts\\_and\\_Ghost\\_Newspapers.pdf](https://www.usnewsdeserts.com/wp-content/uploads/2020/06/2020_News_Deserts_and_Ghost_Newspapers.pdf)

<sup>19</sup> Payment for online access is a prerequisite for including those digital numbers in the industry-accepted audit of circulation conducted by the Alliance for Audited Media (AAM).

the region found it was more effective in reaching the local community. A more unusual example involves a RCRA corrective action permit in Johnston Atoll issued by EPA Region 9 on December 21, 2018. The print newspaper closest to Johnson Atoll is the Honolulu Star-Advertiser which is based in Hawaii and is published 720 nautical miles from the facility. The EPA used the Honolulu Star-Advertiser publication to satisfy the statutory and regulatory newspaper notice requirement, but the notice was relatively expensive and no inquiries regarding the permit originated from the newspaper notice, but rather were initiated by the public reviewing the EPA website and using that contact information. In contrast to these, notification for the Chemical Waste Management's Kettleman Hills facility (a RCRA hazardous waste and Toxic Substances Control Act (TSCA) landfill) in Kings County, California demonstrates what notification under authorities with greater flexibility can look like. The Kettleman Hills landfill is a facility with a community whose closest print newspaper is roughly 30 miles away in Hanford and is published in English only. The nearest community to the facility, in Kettleman City, is primarily Spanish speaking. California's Department of Toxic Substances Control (DTSC) handles the facility's RCRA permitting notices and has specifically assessed the community needs and identified effective communication methods in addition to the required newspaper notice. EPA in its most recent notice for the Kettleman Hills facility, for approval to dispose of polychlorinated biphenyls under TSCA, elected to apply some enhanced communication methods. The notice was published in the Hanford Sentinel, but the EPA region also provided notice via direct mail and email, webpage postings, and posters in the local community in both English and Spanish. These mechanisms were considered more effective than the newspaper publication.

In light of these trends described above, some state permitting agencies find that notice in traditional print newspapers is ineffective. They have supported modernizing the public notice requirements under their authorized programs and have raised the issue to the EPA. For example, two states (Alabama and Georgia) identified this issue for consideration under the 2017 Executive Order (E.O.) 13777 "Enforcing

the Regulatory Reform Agenda.”<sup>20</sup> Both states would prefer that EPA amend its regulations to increase notice flexibility. In comment to this E.O., Georgia Department of Natural Resources<sup>21</sup> stated that “depending on the location of the facility, publication in the major local newspaper with circulation in that area can be very expensive, especially if it is in a major metropolitan area ... As more newspapers go out of business, it may not be possible to find an appropriate newspaper in which to publish the notice.” Also, in comment to this E.O., the Alabama Department of Environmental Management’s letter<sup>22</sup> of May 12, 2017, regarded the newspaper requirement as archaic, expensive, and ineffective. The letter stated: “These archaic rules, originally written in the 1970’s, are completely obsolete and ineffective. First, as print news media has evolved over time, the availability of daily, and even weekly newspapers, is extremely limited. Moreover, many times, outside the control of the regulatory agency, permit notices are published in sections of the media that have very limited readership ... And as the availability and effectiveness of these outlets has declined, the cost associated with these notice methods have increased.”

While the large majority of Americans get their news from digital devices,<sup>23</sup> some newspapers have gone to having print newspapers on a more limited basis and publishing “e-editions” on the other days.<sup>24</sup> The permitting agencies have mentioned that publication of notices in printed newspapers can often delay the permitting process, based on available space for the publication in the print newspaper and based on the publication schedule (if biweekly, for example).

Often the online and print versions will both be available, but in some cases, the community may only have access to online newspapers. In general, online-only newspapers are increasingly common but

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<sup>20</sup> 82 FR 17793, Also see <https://www.federalregister.gov/documents/2017/02/03/2017-02451/reducing-regulation-and-controlling-regulatory-costs>.

<sup>21</sup> Dunn, R. E. *Georgia Environmental Protection Division’s Comments on EPA’s Proposed Evaluation of Existing Regulations*. Letter for Docket EPA-HQ-OA-2017-0190. 2017.

<sup>22</sup> Davis, P. D. *Recommendation for Consideration under Executive Order 13777 on ‘Enforcing the Regulatory Reform Agenda’*. Letter for Docket EPA-HQ-OA-2017-0190. 2017.

<sup>23</sup> Shearer, E. and Mitchell, A. *News Use Across Social Media Platforms in 2020*. Pew Research Center. 2021. Accessed via: [https://www.pewresearch.org/fact-tank/2021/01/12/more-than-eight-in-ten-americans-get-news-from-digital-devices/ft\\_2021-01-12\\_socialmedia\\_01/](https://www.pewresearch.org/fact-tank/2021/01/12/more-than-eight-in-ten-americans-get-news-from-digital-devices/ft_2021-01-12_socialmedia_01/)

<sup>24</sup> Abernathy, P. *News Deserts and Ghost Newspapers: Will Local News Survive?* University of North Carolina Press. 2020. Accessed via: [https://www.usnewsdeserts.com/wp-content/uploads/2020/06/2020\\_News\\_Deserts\\_and\\_Ghost\\_Newspapers.pdf](https://www.usnewsdeserts.com/wp-content/uploads/2020/06/2020_News_Deserts_and_Ghost_Newspapers.pdf)

are not filling the void of the overall decreasing local newspaper availability.<sup>25</sup>

### *C. Relative Benefits of Online Notice Vehicles*

Other EPA permitting programs have finalized changes to their public notice regulations to use a public web site notice as a replacement to newspaper notice. The general benefits of internet-based notices used to support these regulatory changes support the interpretations of RCRA and its implementing regulations advanced in today's notice. Unlike RCRA, the statutory provisions governing these other programs do not require newspaper notice, and the regulatory changes under these programs have dispensed with the previous requirements to provide newspaper notice. EPA does not have that flexibility for notices of permit issuance under RCRA.

The EPA's Office of Air rulemaking for Prevention of Significant Deterioration (PSD) permits (81 FR 71613, October 18, 2016) and EPA Office of Water's rulemaking for National Pollutant Discharge Elimination System (NPDES) permits (84 FR 3324, February 12, 2019) describe the basis for the regulatory change from newspaper notice to internet postings to satisfy public notice requirements.<sup>26</sup> The decision to replace the newspaper requirement was supported by data and rationale presented in the preambles of those rulemakings.<sup>27</sup> The replacement of newspaper notice in those permitting program regulations support the effort for flexibility with RCRA newspaper notice for permitting actions.

The PSD rule preamble (81 FR 71613, page 71622) stated that "the EPA believes that in those instances when Internet posting is the sole notice provided, it will be fully adequate to meet the purpose for which notice is intended—to provide, to as many of the public at large as can reasonably be expected

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<sup>25</sup> Abernathy, P. *News Deserts and Ghost Newspapers: Will Local News Survive?* University of North Carolina Press. 2020. Accessed via: [https://www.usnewsdeserts.com/wp-content/uploads/2020/06/2020\\_News\\_Deserts\\_and\\_Ghost\\_Newspapers.pdf](https://www.usnewsdeserts.com/wp-content/uploads/2020/06/2020_News_Deserts_and_Ghost_Newspapers.pdf)

<sup>26</sup> The EPA RCRA, PSD and NPDES permitting programs have regulatory requirements under "Public notice of permit actions and public comment period" at § 124.10. The PSD notice at § 124.10(c)(2)(iii)(B) now requires notification to the public for the duration of the public comment period, on a "public Web site" identified by the Director (in lieu of the requirement for publication of a notice in a daily or weekly newspaper in § 124.10(c)(2)(i)). The information includes the following: A notice of availability of the draft permit for public comment (or the denial of the permit application), the draft permit, information on how to access the administrative record, and information on how to request and/or attend a public hearing on the draft permit. The NPDES notice at § 124.10(c)(2)(iv) now states that, for NPDES major permits and NPDES general permits, the Director may publish all notices of activities (described in § 124.10(a)(1)) to the permitting authority's public website in lieu of the requirement for publication of a notice in a daily or weekly newspaper (as described in § 124.10(c)(2)(i)). If the Director selects this option for a draft permit, they will include the public notice contents in § 124.10(d) and post the draft permit and fact sheet on the website for the duration of the public comment period.

<sup>27</sup> The data and analysis for justification of the regulation change to internet-based notices for the PSD and NPDES programs in 2016 and 2019 were based on information that may now be superseded by newer studies but was sufficient to make their findings. The trend with newer studies typically shows an increasing trend toward internet usage and decreasing print newspaper availability. Regardless, the older data and analysis that provided support for the PSD and NPDES decisions also inform the interpretation for RCRA.

to be interested, access to important information regarding draft permits. In addition, Internet publishing provides the potential to reach unknown interested parties.” The preamble went on to say that residents in a local jurisdiction might not subscribe to a local paper or happen to see a one-day posting in the legal notices section of the newspaper. At any given time, residents may be out of town and/or relying on the internet for news. The fact that “e-notices” (a term used in the PSD program) will remain on the internet for the duration of the public comment period vastly increases the likelihood that interested parties will receive notice about draft permits. In addition, interested parties would not have the burden of traveling to a physical location to review a copy of the draft permit if a link to the document is also posted on the internet notice.<sup>28</sup> The preamble also mentioned that “Given the widespread use of the Internet in our mobile society, the EPA believes that e-notice’s reach will improve the public notice process and yield positive results.”

Online newspapers can reach a broader audience than print newspapers since notices published online align with the trend on how many Americans are consuming news. Internet use among the public in the United States has expanded tremendously and continues to penetrate all demographic groups.<sup>29</sup> Moreover, online news is often (but not always<sup>30</sup>) cheaper and easier for readers to access than subscriptions for traditional printed newspapers. Online readership for most daily newspapers exceeds print readership.<sup>31</sup> An advantage of online newspapers is that they can be read from mobile devices, enabling permitting agencies to reach individuals wherever they are. Notices in online newspapers can be translated into different languages by widely available software and can be adapted for people with disabilities (for example, screen readers for the visually impaired). The EPA is aware that in some cases, print newspapers can address some of the issues listed above (publishing multilingual papers for example), but the EPA believes that on average, online newspapers address these issues to a larger extent.

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<sup>28</sup> Links to agency websites and permit documentation can be included in the print newspaper notices, but it is easier to implement in online notices.

<sup>29</sup> See response to public comments, in the 2016 Office of Air Prevention of Significant Deterioration (PSD) rulemaking at (81 FR 71613).

<sup>30</sup> The EPA is aware, however, that while online sources are often more efficient and less expensive, it is not the case in every situation. For example, some print newspapers are free.

<sup>31</sup> Abernathy, P. *News Deserts and Ghost Newspapers: Will Local News Survive?* University of North Carolina Press. 2020. Accessed via: [https://www.usnewsdeserts.com/wp-content/uploads/2020/06/2020\\_News\\_Deserts\\_and\\_Ghost\\_Newspapers.pdf](https://www.usnewsdeserts.com/wp-content/uploads/2020/06/2020_News_Deserts_and_Ghost_Newspapers.pdf)

The vast majority of people in the United States have internet access. When Pew Research Center began systematically tracking Americans' internet usage in early 2000, about half of all adults were already online. Today, 93% of American adults use the internet and roughly three-quarters of American adults have broadband internet service at home. The share of Americans that own a smartphone is now 85% (as of February 8, 2021), up from just 35% in Pew Research Center's first survey of smartphone ownership conducted in 2011.<sup>32</sup> EPA is aware that concerns have been raised for those who do not have internet access. EPA acknowledges that the portion of the population that does not have access tends to be rural and low-income people (see Section V.A). Furthermore, internet access does not always mean consistent access. In this regard, EPA reiterates that today's notice does not require online notice in lieu of notice in a printed newspaper; rather, it interprets RCRA and EPA's regulations as allowing for notice in qualifying online newspapers as well as print newspapers and requests comment on also allowing for notice in qualifying agency online bulletins and newsletters. It is important that agencies know and understand the communities they serve so that the appropriate mix of services for providing effective notice can be considered, including the community's access to internet services. In addition, while some communities may have limited internet access, those communities may also not be served by traditional local print newspapers. And, even if they are, residents might not routinely consult those papers for information on things like permit notices. EPA believes it makes sense to afford permitting agencies the maximum flexibility to use notice vehicles that will best serve the local community.<sup>33</sup>

The following Act and Executive Order that the PSD rule (81 FR 71613, page 71621) cited highlight the broader direction within the Federal Government to move towards online and electronic vehicles in government operations and toward efforts to increase efficiency. These authorities support today's notice.

- The E-Government Act of 2002<sup>34</sup> generally requires and encourages federal agencies to better

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<sup>32</sup> Pew Research Center. *Internet/Broadband Fact Sheet*. 2021 Accessed via: <https://www.pewresearch.org/internet/fact-sheet/internet-broadband/>

<sup>33</sup> Notices and other public participation processes must also be implemented consistent with the federal civil rights laws that apply to all recipients of federal financial assistance.

<sup>34</sup> Public Law 107-347, 116 Stat. 2899.

manage and promote internet and information technology use to bring about improvements in government operations and customer service. This Act establishes an Office of Electronic Government in the Office of Management and Budget (OMB) and imposes responsibilities on various high-level government officials including heads of federal government agencies. The Act defines “electronic Government” as “the use by the Government of Web-based Internet applications and other information technologies, combined with processes that implement these technologies, to: (A) Enhance the access to and delivery of Government information and services to the public, other agencies, and other Government entities; or (B) bring about improvements in Government operations that may include effectiveness, efficiency, service quality, or transformation.” 44 U.S.C. 3601(3). While the Act does not mandate internet publication of the EPA's or other agencies' public notices, online publication of notices would, in many communities, advance the goals of enhancing the access to government information by the public, using the internet to improve the effectiveness and efficiency of government operations (in this case, the RCRA permitting process), and providing for higher quality service for the affected communities.

- Executive Order 13576 (June 13, 2011), Delivering an Efficient, Effective, and Accountable Government,<sup>35</sup> encourages federal agencies to cut waste, streamline structure and operations, and reinforce performance and management reform. The objectives of the E.O. include “reducing wasteful or ineffective programs, policies, and procedures.” The EPA maintains that increased effectiveness in public notice would support these objectives.

Some state permitting agencies find the newspaper notice an expensive form of notice in general relative to its effectiveness. The costs for public notices are entirely dependent upon the newspaper and its circulation. Basically, the rates tend to be highest for daily newspapers in large metropolitan areas and lowest in small rural towns. In 2015, the EPA Office of Superfund Remediation and Technology

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<sup>35</sup> Exec. Order 13576. June 13, 2011.

Innovation (OSRTI) conducted a study on newspaper notification in the Superfund cleanup process<sup>36</sup> where it concluded that a major local newspaper of general circulation is not always effective in reaching the intended audience and that it is relatively costly. The study found that the rates for publication in daily newspapers in large metropolitan areas vary from \$2,800 (Sacramento Bee) to \$3,500 (Houston Chronicle). Publication costs for small rural newspapers are significantly less. In general, it costs about \$3,000 for ads in large daily newspapers and often less than \$100 or free for small rural newspapers according to the research conducted. Also, based on information provided by seven EPA regions for the research, it is estimated that the average cost per public notice was \$884 at that time. The print newspaper ads ranged from an average of \$352 – \$1,550 across the different EPA Regions. OSRTI's study also noted that circulation of newspapers is shrinking, so even when newspapers are available, readership is decreasing on average. The EPA's recommendation in that study was that the community is better served with a strategic approach that uses communication and outreach methods that are best suited to the community and situation. The PSD<sup>37</sup> and NPDES<sup>38</sup> rulemakings (mentioned previously in this section) included a discussion in their preambles on the estimated costs and program savings of amending regulations to use internet-based notice versus newspaper.

The Agency sees all the above reasons as providing a strong case that EPA and authorized states need the flexibility to provide notice of the intent to issue permits – and to take other actions – through vehicles other than print newspapers. EPA believes significant benefits will be realized by recognizing that qualifying online newspapers satisfy the newspaper requirement of RCRA section 7004(b)(2). EPA believes significant additional benefits would be realized if online newsletters or bulletins published by permitting agencies could satisfy the requirement as well (see Section VI.B for the discussion on online newsletters or bulletins).

## **VI. Clarify Statutory and Regulatory Requirements for Newspaper Notice of RCRA Permitting and Other Actions**

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<sup>36</sup> EPA Office of Superfund Remediation and Technology Innovation. *U.S. EPA Regional Practices/Experiences with Publication of Notices during the Superfund Process*. 2015. Accessed via: <https://downloads.regulations.gov/EPA-HQ-SFUND-2014-0620-0009/content.docx>

<sup>37</sup> 81 FR 71613, page 71623.

<sup>38</sup> 84 FR 3324, page 3334.

*A. Online Newspapers that are Local and of General Circulation Satisfy RCRA and Regulatory Requirements*

EPA believes that online newspapers can qualify as “newspapers” within the meaning of RCRA section 7004(b)(2) and EPA’s regulations. In addition, EPA believes that such newspapers can satisfy the criteria of being “major,” “local,” and “of general circulation.”

There is no reason, in EPA’s view, that an online publication cannot be considered a newspaper. The term “online newspaper,” for the purposes of this document, refers to any electronic or internet-accessible newspaper. While definitions of “newspaper” vary, a fairly standard definition is found in the online Cambridge Dictionary: “a regularly printed document consisting of large sheets of paper that are folded together, or a website, containing news reports, articles, photographs, and advertisements.”<sup>39</sup> Dictionary.com defines newspaper as: “1. A printed publication issued at regular and usually close intervals, especially daily or weekly, and commonly containing news, comment, features, and advertising. . . . 4. an online version of a newspaper.”<sup>40</sup> A number of federal and state cases refer to “online newspapers” or “internet newspapers,” in acknowledgement that such publications are widely referred to and considered to be newspapers, e.g., *Act Now to Stop War v. D.C.*, 846 F.3d 391, 401 (D.C. Cir. 2017). The EPA’s PSD rulemaking discussed above treats both “print and digital” newspapers as newspapers (81 FR 71621). Some well-known, formerly printed newspapers have transitioned to online-only format (e.g., the Seattle Post-Intelligencer), and EPA believes these publications are widely considered and referred to as newspapers. Moreover, some statutes requiring notice in newspapers specify that the newspapers be “printed,” whereas RCRA section 7004(b)(2) does not specify “print” newspapers. See case discussion in *What constitutes newspaper of “general circulation” within meaning of state statutes requiring publication of official notices and the like in such newspaper*, 24 A.L.R.4<sup>th</sup> 822 section 11[a]. In short, EPA believes an online publication that has the kinds of characteristics identified in standard definitions of “newspaper” qualifies as a newspaper within the

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<sup>39</sup> See <https://dictionary.cambridge.org/us/dictionary/english/newspaper>.

<sup>40</sup> See <https://www.dictionary.com/browse/newspaper>.

meaning of section 7004(b)(2).

Furthermore, EPA believes an online newspaper can meet the additional section 7004(b)(2) and corresponding regulatory elements. As with the term “newspaper,” definitions of “newspaper of general circulation” vary. Discussion of the term in a number of judicial cases has been summarized as:

A newspaper of general circulation is one that circulates among all classes and is not confined to a particular class or calling in the community, and is a term generally applied to a newspaper to which the general public will resort in order to be informed of the news and intelligence of the day, editorial opinion, and advertisements, and thereby to render it probable that the notices or official advertising will be brought to the attention of the general public. A newspaper of "general circulation" has also been described as one that contains news of general interest to the community and reaches a diverse readership.<sup>41</sup>

EPA sees no reason that an online newspaper cannot qualify as a newspaper of general circulation. Nor is EPA aware of a reason that an online newspaper cannot qualify as “major” and “local.”

It is not the purpose of this notice to specify the criteria for determining what online (or print) newspapers qualify as major, local, and of general circulation. Rather, this notice conveys EPA’s interpretation that a newspaper is not disqualified from meeting those elements simply because it is online.

While this notice does not specify criteria in this regard, it does convey EPA’s view that the section 7004(b)(2) terms should be construed broadly in determining whether an online (or print) newspaper qualifies, to meet the intent of the statutory provision. Congress added this section to RCRA so that people who live in the vicinity of a proposed hazardous waste management facility would have notice of the intended issuance of permits and thereby “have the opportunity to have their opinions heard before a permit to build a hazardous chemical waste site is issued.”<sup>42</sup> This objective could be frustrated by a narrow reading of the statutory text.

As shown above in Section V, notice methods other than print newspapers are likely to be more effective in the current media environment in many communities, and this reality will only become more pronounced as the public increasingly turns to online news and information sources. While the EPA and

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<sup>41</sup> 66 C.J.S. *Newspapers* section 4 (1998).

<sup>42</sup> Floor Debate on H.R. 3994, February 20, 1980, *A Legislative History of the Solid Waste Disposal Act, as Amended*, S. Prt. 102-35, Vol. 1 at 1082.

authorized states must comply with section 7004(b)(2), the EPA will interpret its text in way that is most likely to effectively provide timely and meaningful notice to citizens potentially impacted by permitted facilities in an increasingly digital world.

Moreover, a narrow reading of the statutory text could make issuance of permits impossible in many communities – a result that Congress surely did not intend and that the statutory language does not compel. EPA and authorized states *must* publish notice of their intention to issue each RCRA Subtitle C permit in a major local newspaper of general circulation. And yet, as shown above, many communities no longer have newspapers that would likely have traditionally considered to be “local.” Thus, as a practical matter, section 7004(b)(2) must be interpreted flexibly to ensure that EPA and authorized states can continue to issue permits while providing compliant notice.

EPA’s discussion in this section about online newspapers satisfying the requirement for newspaper notice applies to notice for permit actions other than permit issuance, in addition to the agency’s notice of permit issuance covered under 7004(b)(2) specified above. More broadly, this discussion and interpretation applies to all RCRA regulatory requirements for “newspaper” notice. For example, it applies to the requirement that EPA publish notice of its decision to approve revisions to a state’s authorized program under RCRA “in enough of the largest newspapers in the State to attract statewide attention” per 40 CFR 271.21(b)(3)(i)(B) and (b)(4)(i)(B). Simply put, EPA believes that the term “newspaper” is commonly understood to refer to online as well as print newspapers and that the benefits of the flexibility to use online as well as print newspapers apply regardless of the specific purpose of the notice. These interpretations apply to all EPA regulations that require “newspaper” notice of RCRA permit actions, of course, whether or not the action is governed by RCRA 7004(b)(2).

The EPA welcomes comment on the interpretation that notice of the intent to issue RCRA permits in online newspapers that are major, local and of general circulation satisfies RCRA section 7004(b)(2) and the corresponding EPA regulatory requirements, and that online newspapers generally qualify as “newspapers” under Subtitle C regulations requiring newspaper notice. The EPA intends to operate under this interpretation in the meantime, because it does not believe the interpretation should be

controversial and because it does not see a good basis to operate under a more restrictive interpretation. States with similar authorized regulations<sup>43</sup> may also implement an interpretation similar to EPA's without seeking authorization if no state regulatory changes are made. However, EPA will consider any comments received and may either affirm the interpretation or revise it following review of any comments. Also, EPA welcomes comment on whether it should clarify the inclusion of "online newspapers" by amending its regulations that require newspaper notice for permit and other actions.

Note that this interpretation does not prohibit authorized states and EPA from publishing notices in print newspapers; rather, this interpretation clarifies the flexibility afforded by the statutory and EPA regulatory text. The EPA encourages permitting agencies to satisfy the statutory and regulatory newspaper requirements in a manner that provides the most effective public notice mechanisms for a specific community. Section V.A describes the importance of adapting public notice methods to the local community and the importance of doing appropriate research and outreach to determine what combination, of the many methods available, will work best for a given community. In some situations, notice in both print and online newspapers will likely make the most sense. However, EPA recognizes that permitting agencies often have limited funds for notification and wish to have the most effective notice with their limited funds, and in some situations the print version is an additional cost with limited circulation. As mentioned in Section V.B, some state permitting agencies find print newspaper notice ineffective and expensive.<sup>44,45</sup> See additional background on the notification costs in Section V.C and Section VI.B.

In addition, the EPA notes that newspapers are just one of several public participation vehicles used by states and EPA in engaging communities; newspaper notice is required by statute for permit issuance, but other vehicles can certainly be used in addition to newspaper notice and be more efficient.

#### *B. Request for Comment on Whether Online EPA or State Newsletters/Bulletins Would Satisfy RCRA*

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<sup>43</sup> For example, if a state is authorized for public notice criteria with similar criteria to "publication of a notice in a daily or weekly major local newspaper of general circulation" as stated in 40 CFR 124.10(c)(2)(ii), they could use the same interpretation.

<sup>44</sup> Dunn, R. E. *Georgia Environmental Protection Division's Comments on EPA's Proposed Evaluation of Existing Regulations*. Letter for Docket EPA-HQ-OA-2017-0190. 2017.

<sup>45</sup> Davis, P. D. *Recommendation for Consideration under Executive Order 13777 on 'Enforcing the Regulatory Reform Agenda'*. Letter for Docket EPA-HQ-OA-2017-0190. 2017.

## *and Regulatory Requirements*

The Agency is considering and requests comment on whether online newsletters or bulletins published by permitting agencies could qualify as newspapers under EPA regulations, and specifically whether they could qualify under RCRA section 7004(b)(2) and corresponding regulations as major local newspapers of general circulation. While EPA believes significant benefits can be realized by providing notice in online versions of traditional newspapers as compared to print newspapers, EPA also believes that further gains in the quality and efficiency of notice would be achieved in many communities if RCRA section 7004(b)(2) and the EPA regulations were interpreted as allowing for notices posted in appropriate vehicles on agency websites.

EPA has previously recognized the significant notice benefits that can be realized through the posting of notices on agency websites, as compared to notices in traditional newspapers. For example, in the previously referenced PSD (81 FR 71613, October 18, 2016) and NPDES rulemakings (84 FR 3324, February 12, 2019), EPA recognized that online formats can provide more efficient and effective notice for permitting programs in those rulemakings. The PSD change was supported by findings on newspaper readership decline, statistics on the increase of internet usage (and wide availability of internet in public libraries), cost, and other rationale. The rulemaking preamble stated that all state and local agency commenters generally supported the proposal and summarized the benefits of e-notice as follows:<sup>46</sup>

(1) Significantly improve communication with the public on permit actions in comparison to a one-day newspaper notice; (2) result in broader and better informed public participation; (3) reduce costs and conserve air agency resources; (4) improve public access by making permit actions immediately available through convenient and reliable electronic media outlets; (5) improve communication with environmental justice (EJ) communities and other target audiences; (6) allow for information to be made available for an extended time period; and (7) provide flexibility for permitting agencies and sources by avoiding time delays associated with newspaper publication and allowing for faster correction of errors and rescheduling of events.

Prior to those rulemakings, in 2011, the EPA issued the Tribal New Source Review (NSR) rules that contained, among other things, requirements for noticing of permits in Indian Country that provided for options other than newspaper and print media (76 FR 38748, July 1, 2011). The July 2011 Tribal NSR

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<sup>46</sup> 81 FR 71613, page 71620.

rule provides options such as web posting and email lists among the methods that the permitting agency may use to provide adequate public notice of such permits.

The benefits EPA identified in these rulemakings apply with equal force to RCRA permitting, and also largely apply to notice of other implementation actions under the Subtitle C regulations. For example, publication of permit notices in online bulletins or newsletters published by state environmental agencies would further reduce costs and processing time for permitting agencies, as they would have greater control over posting and updating public notices. The online sites could also easily make the information available for the entire time the notice is applicable (versus the typical one-time publication in a print newspaper, since it can be inordinately costly to run the ad for the entire public comment period and is not required). See additional information on cost in Section V.C. States and the EPA could provide greater context for the notice, for example, linking to applicable permitting documents. In addition, it is reasonable to assume the public, seeking information about hazardous waste facilities permitted by a state or the EPA, would naturally seek information from the state or the EPA websites directly. News bulletins published by state environmental agencies could allow the public a central place to find and subscribe to all environmental news affecting their locality. State RCRA hazardous waste permitting agencies have strongly supported modernizing the public notice requirements under their authorized programs and have raised the issue to the EPA for many years (see discussion and examples in Section V). The RCRA state programs have also raised the issue that print newspapers are not available in all communities (see examples and discussion in Section V.B).

Candidly, EPA views the section 7004(b)(2) newspaper requirement as anachronistic. It seems likely that, if the provision were being drafted today, Congress would not require this notice method for every permit issuance, in view of the rise of online information and news sources and the disappearance of local newspapers. Were it not for section 7004(b)(2), EPA would most likely move toward the broader range of flexibility for RCRA permitting that it created for PSD and NPDES permitting, which utilize web postings for the notice (see Section V.C). In view of this provision of RCRA, however, EPA intends to utilize and provide for the broadest degree of flexibility the text can afford.

Courts and other authorities have acknowledged that the line between newspapers and other publications is difficult to draw.<sup>47</sup> Moreover, there is a range of definitions of “newspaper of general circulation.” In a holding typical of a number of decisions, a court has stated that, in determining whether a publication qualifies as a newspaper of general circulation under a statute, “the ultimate consideration” is whether the publication “fulfills the purpose underlying [the] statute. . . – to give notice to the general public.”<sup>48</sup> The EPA believes online newsletters and bulletins could potentially qualify as newspapers of general circulation for purposes of section 7004(b)(2) if they fulfill the purpose of effectively providing notice to the affected community.

EPA recognizes that Agency web postings would probably not commonly be referred to as newspapers. Publications understood to be newspapers are typically generated by private companies, rather than by government agencies. However, courts have treated publications of the Army News Service, which is part of the Army’s Command Information Program, as newspapers.<sup>49</sup> Thus, EPA does not believe publication by a federal agency bars an information source from being considered a newspaper.

EPA has identified examples of web-based bulletins and newsletters published by state environmental agencies that satisfy key criteria identified in case law and other sources to identify newspapers of general circulation. A summary of such criteria from Corpus Juris Secundum (CJS) is quoted above. A similar summary is provided in Black’s Law Dictionary, which defines “newspaper of general circulation” as:

A newspaper that contains news and information of interest to the general public, rather than to a particular segment, that is available to the public within a certain geographic area, that is circulated mostly to paid subscribers, and that has been continuously serving the same readership area for a specified time.

Applying the kinds of criteria found in the definitions, EPA has identified online bulletins and newsletters published by some state environmental agencies that:

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<sup>47</sup> See, e.g., *Old Principles, New Technology, and the Future of Notice in Newspapers*, 38 Hofstra L. Rev. 1009, 1028 (“As defined by ordinary dictionaries, the term ‘newspaper’ is ambiguous. Likewise, no universal legal definition of ‘newspaper’ exists”).

<sup>48</sup> *City of Postville v. Upper Explorerland Regional Planning Commission*, 834 N.W. 2d 1 (IA 2013).

<sup>49</sup> See, e.g., *Bryant v. Sec’y of Army*, 862 F. Supp. 574, 576 (D. D.C. 1994) (reviewing claims relating to *The Pentagon* and *The Stripe* – both classified as Civilian Enterprise Newspapers).

- Contain news and information of interest to the general public, rather than to a particular segment. Members of the public generally have interest in environmental and land use issues affecting the community, and the postings of environmental agency bulletins and newsletters generally are not targeted to a particular segment of the population. Along these lines, some state bulletins and newsletters appear on websites that contain information on a broad range of public lands, recreational and other environmental and conservation-related matters as well as information on specific permitting actions.
- Have been continuously serving the same readership for an extended period and are widely recognized in the state as reliable sources of information on environmental developments and issues. These sources are therefore likely to be consulted for such information, such that it is probable that notices appearing in them will be brought to the attention of the interested public.
- Are available to subscribers, in addition to the public more generally, through Listservs.
- Publish at regular, short intervals.

Courts have held newspapers to be of general circulation for the purpose of a particular type of notice where they were of interest to the part of the community likely to be concerned with the subject of the notice in question and/or have a reputation for carrying a particular type of notice. This consideration would militate in favor of considering well-established online state environmental bulletins and newsletters to be newspapers of general circulation.

Moreover, EPA has identified online bulletins and newsletters that can be viewed as “local.” They are specific to the state, and some divide the notices within the state into regions (for example, by county or city). Their circulation may not be limited to particular localities in the same way as traditional local print newspapers; but, again, many communities do not have such traditional local newspapers in any format. And these bulletins can be considered “major,” because they have a large number of subscribers and are widely known in the state as the best source for information on environmental permits and other environmental issues.

EPA recognizes that web-based agency environmental bulletins will likely not have all of the

elements identified in the various definitions of “newspaper of general circulation.” For example, the summary provided in CJS identifies “editorial opinion, and advertisements” as elements. However, there is no definitive definition of “newspaper of general circulation,” and the various definitions differ. Accordingly, courts have held that newspapers that lack some of the features identified in some definitions nonetheless qualify as newspapers of general circulation.<sup>50</sup> RCRA section 7004(b)(2) does not prescribe specific characteristics that a newspaper must have to qualify under the general statutory language, and it should therefore be interpreted flexibly to accomplish the underlying purpose of providing effective notice to the public. EPA is specifically requesting comment regarding whether online bulletins or newsletters published by state or EPA permitting agencies can be considered major local newspapers of general circulation and, if so, what attributes they should possess to be considered as such. EPA will not implement such an interpretation until after comments are received and assessed (but with regard to permit actions that are not under section 7004(b)(2), see the approach outlined in Section VII). Also, EPA welcomes comments on whether it should propose to amend the permitting public notice regulations to address the use of agency newsletters and bulletins. (Note, other options will continue to be available, see Section V.A on site-specific assessment for notification and outreach for permit issuance and other actions outlined in the 2016 RCRA Public Participation Manual.<sup>51</sup>)

## **VII. Newspaper Notice Requirements for Permitting Actions That Are Not Subject to RCRA**

### **Section 7004(b)(2)**

RCRA section 7004(b)(2) applies only to notice of a state agency’s or EPA’s intention to issue<sup>52</sup> a RCRA permit. However, as stated above, EPA regulations impose newspaper notice requirements on a broader range of permitting actions. Examples include the following:

- Class 3 modifications (§ 124.10(c)(2)(ii)) and Agency-initiated modifications (§§ 270.41, 124.5, and 124.10(c)(2)(ii));

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<sup>50</sup> See, e.g., 24 A.L.R. 4<sup>th</sup> 822 section 4[a] (citing caselaw holding that a publication qualified as a newspaper of general circulation despite containing no editorials, because the governing statute did not require that the newspaper contain editorials).

<sup>51</sup> EPA Office of Land and Emergency Management. *Resource Conservation and Recovery Act Public Participation Manual*. 2016. 530-R-16-013, Chapter 5. Accessed via: [https://www.epa.gov/sites/default/files/2019-09/documents/final\\_rcra\\_ppm\\_updated.pdf](https://www.epa.gov/sites/default/files/2019-09/documents/final_rcra_ppm_updated.pdf)

<sup>52</sup> RCRA Permit “issuance” includes the issuance of RCRA permit renewals (as discussed in Section IV) in addition to initial permit issuance.

- Permit modification requests by the permittee per §§ 270.42(b)(2) and (c)(2));
- Requirement to list annual permit modification approvals in a statewide newspaper (§ 270.42(i));
- Permit denials (§ 124.1(a)); and
- Any other newspaper notice required under RCRA Subtitle C that are not for the permitting agency's intention to issue a RCRA permit.

EPA regulations also require newspaper notice for actions and events other than permitting actions. For example, the regulations in 40 CFR 271.21(b)(3)(i)(B) and (b)(4)(i)(B)) require EPA to provide notice of state authorization decisions in state newspapers.

When the EPA is the permitting agency, the EPA must adhere to these requirements. Although authorized states are subject to the section 7004(b)(2) requirement for the issuance of permits, they are not subject to the 40 CFR part 124 regulatory requirements; rather, they are subject to the analogous authorized text in their regulatory requirements. Authorized state permitting requirements must be equivalent to and no less stringent than the federal program, but they need not be identical (see the note<sup>53</sup> in the regulations at 40 CFR 271.14). As explained in Section VI.B above, the EPA believes that online forms of notice (including state newsletters/bulletins) are likely to be more effective than notice in traditional print newspapers in many communities. Consequently, if authorized states interpret their existing authorized regulations as allowing for such flexibility for notices not subject to section 7004(b)(2), EPA would generally not view that as creating an issue as to the equivalence of the state program as long as they provide for notice that is likely to be as effective as or more effective than the notice required by the federal regulations. If states must amend their regulations to provide this flexibility, EPA believes that these regulations are likely to be equivalent to the federal program.

Finally, EPA requests comment on whether it should amend its public notice regulations to clarify options for public noticing permit actions and other actions (except for permit issuance), which are not governed by RCRA 7004(b)(2). EPA does not envision regulatory changes to preclude newspaper notice

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<sup>53</sup> 40 CFR 271.14 Note: "States need not implement provisions identical to the above listed provisions. Implemented provisions must, however, establish requirements at least as stringent as the corresponding listed provisions."

where it is appropriate, but the Agency is interested in the public's views as to whether the regulations should allow for a broader range of notice mechanisms, including web postings, where appropriate for the community and circumstances. As discussed in the preceding paragraph, such amendments are not necessary to afford authorized states this flexibility, and most permit actions are undertaken by authorized states.

## **VIII. Environmental Justice and Civil Rights Considerations**

The EPA has carefully considered the principles of equity in developing this notice to ensure equity and accessibility and to increase transparency to marginalized communities. The principle of equity focuses on ensuring that all communities have access to equitable environmental and public health benefits and a meaningful opportunity to participate in decision making. This includes communities of color and low-income communities as well as people with limited English proficiency and with disabilities. As noted by the EPA Administrator “[t]oo many communities whose residents are predominantly of color, Indigenous, or low-income continue to suffer from disproportionately high pollution levels and the resulting adverse health and environmental impacts.” In an effort to increase EPA’s protective measures, activities, and programs in new and creative ways in communities with environmental justice concerns, the EPA carefully evaluated the potential effect of the interpretations presented in this notice on underserved communities with EJ concerns. In addition, EPA considered the interpretations presented in this notice in light of the federal civil rights laws that apply to recipients of EPA financial assistance.

Public notices represent one of the regular and official channels of communication with communities burdened with environmental justice concerns. The RCRA Expanded Public Participation Rule<sup>54</sup> enhanced public involvement in the RCRA permit process by requiring permitting agencies (e.g., EPA or the authorized state) to expand procedural opportunities for public participation earlier in the process and during key milestones for communities affected by RCRA permits. The effectiveness of noticing methods for reaching marginalized communities and communities with environmental justice concerns

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<sup>54</sup> 60 FR 63417, December 11, 1995

is a substantial concern to the EPA. As noted in Section V.C, the loss of newspapers is disproportionate. The 2020 UNC Hussman report concluded that, in the past 15 years, the U.S. has lost one-fourth (2,100) of its newspapers and most of these losses were sustained in economically struggling communities. The economic fallout from the COVID-19 pandemic has dramatically increased the decline. To ensure the most meaningful public participation in the issuance of RCRA permits and other RCRA permit actions, EPA finds it necessary to consider modern tools and methods for public notice and outreach, as discussed in this notice, to reflect substantial changes in technology, the media, and the way different segments of the public access information.

According to the final National Environmental Justice Advisory Council (NEJAC), EJ in Permitting Subgroup Report,<sup>55</sup> the publication in the legal section of a regional print newspaper is antiquated, ineffective, and is not ideal for providing notice to low-income and minority communities. Regarding public participation, the report recommends the following to the EPA: “To ensure meaningful public participation, the public notice and outreach process must include direct communication in appropriate languages through telephone calls and mailings to EJ and tribal communities, press releases, radio announcements, electronic and regular mail, website postings and the posting of signs.” EPA finds today’s notice consistent with the report’s recommendations in that EPA intends to provide for the full range of flexibility allowed by RCRA and EPA regulations to satisfy the public notice requirements.

In the 2016 PSD rulemaking described above, commenters noted that modernizing notification processes to provide for electronic notice would be more efficient and convenient for communicating permitting-related information to the public, including communities with environmental justice concerns. Several commenters supported the EPA’s conclusion that because there have been substantial changes in technology, the media, and the way the public access media, electronic notifications are more effective means of public notification than newspaper publication. Commenters note that this conclusion applied not only to the public in general, but also for communities with environmental justice concerns.

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<sup>55</sup> National Environmental Justice Advisory Council. *Enhancing Environmental Justice in EPA Permitting Programs*. A Report of Advice and Recommendations. 2011, pages 20-21. Accessed via: <https://www.epa.gov/sites/production/files/2015-02/documents/ej-in-permitting-report-2011.pdf>

One commenter noted that overburdened communities today obtain and share more information through the internet than through newspaper circulation. The comments also confirmed that some districts have already been encouraged to provide electronic notice by EJ advocates, noting that such notices improve the level of available information and customer service offered to the public, including marginalized communities, by allowing the district to immediately make available permitting action notices in languages other than English. To that point, the commenter explained that public outreach initiatives cannot be nearly as effective with just traditional newspaper notification. The EPA agreed with the commenters and found that electronic notice and electronic access have been an effective and convenient way to communicate permitting-related information to the public.<sup>56</sup>

As marginalized communities impacted by environmental justice concerns and other targeted audiences shift away from traditional news and information vehicles and increase their use of the web-based resources for information, the option for electronic noticing public notices could improve communication and increase the public's participation in the RCRA permit process for some of these communities.

## **IX. Do Guidance Documents Contain Binding Requirements?**

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

Dated: December 10, 2021.

**Carolyn Hoskinson,**  
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*Office of Resource Conservation and Recovery.*

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<sup>56</sup> EPA recognizes that such electronic vehicles may not be effective for some segments of the public at some facilities.